exemption clause, when itself part of the scheme to issue fully paid-up stock for overvalued property, should be void. Another difficulty with the defense arises from the fact that, the creditor's right against the stockholder being direct, the stockholder is availing himself as beneficiary of a defense created for him by a contract to which he was a stranger. Neither of these objections to the defense, however, seems insuperable. As a matter of authority the validity of a stockholder's exemption clause has been unanimously sustained, without, however, any attempt to differentiate as to possible bases of the liability. *Brown* v. *Eastern Slate Co.*, 134 Mass. 590; *Basshor & Co.* v. *Forbes*, 36 Md. 154; *Bush* v. *Robinson*, 95 Ky. 492, 26 S. W. 178; *Grady* v. *Graham*, 64 Wash. 436, 116 Pac. 1098. But *cf. Kreisser* v. *Ashtabula Gas Light Co.*, 24 Ohio Cir. Ct. R. 313.

CRIMINAL LAW — SUSPENSION OF SENTENCE. — A prisoner was convicted in a District Court of the United States for embezzlement in violation of section 5209 REVISED STATUTES, and sentenced to imprisonment for five years, the minimum provided for by the statute. The judge, then, over the objection of the United States District Attorney, ordered the suspension of execution of the sentence, during the good behavior of the prisoner, and extended the term of the court for five years. The United States seeks from the Supreme Court a writ of *mandamus*, directing the judge to vacate the order. *Held*, that *mandamus* should issue. *Ex parte United States, Petitioner*, U. S. Sup. Ct., Oct. Term, 1915, No. 11 original.

For a discussion of this case, see NOTES, p. 369.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — ADDITIONAL LIABILITY FOR INJURY CAUSING DEATH. — Section 1 of the Federal Employers' Liability Act provides that where the employee of an interstate carrier is negligently killed, his representative may recover for the benefit of the next of kin. U. S. COMP. STAT. 1913, § 8657. Section 9 provides that where an employee is injured, his right of action shall survive to his representative for the benefit of the next of kin. U. S. COMP. STAT., § 8665. An employee of an interstate carrier was injured, and, after having lived ten minutes in an unconscious condition, died from the injury. His representative seeks to recover under both statutes. *Held*, that he may recover only under the death statute. *Great Northern Ry. Co.* v. *Capital Trust Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 107.

Many states have statutes similar to those in the principal case. See TIFFANY, DEATH BY WRONGFUL ACT, 2 ed., § 26. Most courts hold that there may be a recovery under the survival statutes, even if death results from the injury. *Missouri, etc. Ry. Co.* v. *Bennett*, 5 Kan. App. 231; *Brown* v. *Chicago, etc. Ry. Co.*, 102 Wis. 137, 77 N. W. 748. *Contra, Merrihew* v. *Chicago, etc. Ry. Co.*, 92 Ill. App. 346; *Lubrano* v. *Atlantic Mills*, 19 R. I. 129, 32 Atl. 205. And a majority of the states allow recovery under the death acts, although death is not immediate. *Brown* v. *Buffalo, etc. R. Co.*, 22 N. Y. 191. See *Roach* v. *Imperial Mining Co.*, 7 Fed. 698, 704. *Contra, Sawyer* v. *Perry*, 88 Me. 42, 33 Atl. 660; *Dolson* v. *Lake Shore, etc. Ry. Co.*, 128 Mich. 444, 87 N. W. 629. It would follow that the facts may be such as to satisfy both statutes. The theories of the two actions are entirely different. See 15 HARV. L. REV. 854. Consequently most jurisdictions permit a recovery under both, where the facts permit it. *Leggott* v. *Great Northern Ry. Co.*, 1 Q. B. D. 599; *Mahoning Valley Ry. Co.* v. *Van Alstine*, 77 Ohio St. 395, 83 N. E. 601. See *Stewart* v. *United Electric Light & Power Co.*, 104 Md. 332, 344, 65 Atl. 49, 54; *Murphy* v. *St. Louis, etc. R. Co.*, 92 Ark. 159, 163, 122 S. W. 636, 638. *Contra, Sweetland* v. *Chicago, etc. R. Co.*, 117 Mich. 329, 75 N. W. 1066. It would seem to be immaterial that the same person may receive the benefit of both actions. But, where the death

from an injury is instantaneous, no action for the injury survives. *Illinois, etc. R. Co.* v. *Pendergrass*, 69 Miss. 425, 12 So. 954; *Dillon* v. *Great Northern Ry. Co.*, 38 Mont. 485, 100 Pac. 960. See *Hansford* v. *Payne*, 11 Bush (Ky.) 380, 385. But *cf. Murphy* v. *New York, etc. R. Co.*, 30 Conn. 184; *Worden* v. *Humeston, etc. R. Co.*, 72 Iowa 201, 33 N. W. 629. Nor is there a survival, if there was conscious suffering which was substantially contemporaneous with death. *The Corsair*, 145 U. S. 335, 348. It is said that the deceased never suffered damage substantial enough to give him a cause of action which could survive. It would seem to follow, as the principal case holds, that no action survives in cases where the decedent lived for a time, but was never conscious. See *St. Louis, etc. Ry.* v. *Craft*, 237 U. S. 648, 655. But the weight of authority takes a contrary view. *Bancroft* v. *Boston, etc. R. Co.*, 93 Mass. 34; *Olivier* v. *Houghton, etc. Ry.*, 134 Mich. 367, 96 N. W. 434.

EQUITY — JURISDICTION — POLITICAL RIGHTS; INJUNCTION TO PROTECT. — One Gilmore, a Democrat, is candidate for Railroad Commissioner. The State Democratic Committee is about to nominate one Hurdleston for the office. TEXAS REV. STAT. 1911, § 3173, forbids the state committee of a party to nominate candidates. TEXAS REV. STAT. 1911, § 3143, authorizes a *mandamus* to enforce the prior statute; and TEXAS REV. CR. STAT. 1911, § 226, makes its violation criminal. Gilmore seeks to enjoin the committee from making the nomination. *Held*, that an injunction will issue. *Gilmore* v. *Waples*, 188 S. W. 1037.

Although all political rights are considered legal rights, yet between purely political rights and civil rights the courts draw a distinction. The overwhelming weight of judicial authority is to the effect that courts of equity will not protect those political rights which do not involve civil rights. *Fletcher* v. *Tuttle*, 151 Ill. 41, 37 N. E. 683; *Kearns* v. *Howley*, 188 Pa. 116, 41 Atl. 273; *Green* v. *Mills*, 69 Fed. 852; *State* v. *Aloe*, 152 Mo. 466, 54 S. W. 494; *Winnett* v. *Adams*, 71 Neb. 817, 99 N. W. 681. See 5 POM. EQ., 3 ed., §§ 331, 332; KERR, INJUNCTION, 4 ed., 8. Most of these cases proceed on the ground that there has been no tort at law, a position perhaps open to some doubt. See Pound, "Equitable Relief against Injuries to Personality," 29 HARV. L. REV. 640, 681; 30 HARV. L. REV. 172, 174. However that may be, it must be clear that the use of an equitable remedy in a case like the present, where the appeal is from a party body and the injunction runs to them, involves practical difficulties very serious in character. Policy leaves the redress of this class of wrongs to the voters. See *Winnett* v. *Adams*, 71 Neb. 817, 825, 99 N. W. 681, 684. The statutory remedy by *mandamus*, too, seems as sufficient as it is convenient. And if it was a sound principle of equity before the statute passed that political rights would not be protected, it must be so still, for most political rights are "legal" rights whether or not they are recognized by statute. The distinction is between political and civil, not political and legal, rights.

EVIDENCE — HEARSAY — EVIDENCE OF INTERPRETATION OF OPPONENT'S DECLARATIONS. — In an action for personal injuries, the defendant set up a release by the plaintiff. The plaintiff, a Pole, seeks to show that he signed this without knowledge of its nature. It was proved that the defendant's agent, when securing the plaintiff's signature, had used a bystander as an interpreter. The defendant offers the testimony of the agent as to what, during the interview, the interpreter had told him that the plaintiff said. *Held*, that this is admissible. *Grocz* v. *Delaware & Hudson Co.*, 161 N. Y. Supp. 117.

In conformity to the rule against hearsay, a participant in a conversation carried on through an interpreter may not generally testify to the interpretation of what was said by the other speaker. *State* v. *Noyes*, 36 Conn. 80. But it is well settled that such evidence may be introduced by one party to the suit